
HOUSE BILL 2719

State of Washington 60th Legislature 2008 Regular Session

By Representatives Priest, Hurst, Loomis, and VanDeWege

Read first time 01/16/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to ensuring that offenders receive accurate
2 sentences; amending RCW 9.94A.441, 9.94A.500, and 9.94A.530; reenacting
3 and amending RCW 9.94A.525; and creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the legislature's intent to ensure
6 that offenders receive accurate sentences that are based on their
7 actual, complete criminal history. Accurate sentences further the
8 sentencing reform act's goals of:

9 (1) Ensuring that the punishment for a criminal offense is
10 proportionate to the seriousness of the offense and the offender's
11 criminal history;

12 (2) Ensuring punishment that is just; and

13 (3) Ensuring that sentences are commensurate with the punishment
14 imposed on others for committing similar offenses.

15 Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005);
16 *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472
17 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature
18 finds it is necessary to amend the provisions in RCW 9.94A.441,
19 9.94A.500, 9.94A.525, 9.94A.530, and 9.94A.585 in order to ensure that

1 sentences imposed accurately reflect the offender's actual, complete
2 criminal history, whether imposed at sentencing or upon resentencing.
3 These amendments are consistent with the United States supreme court
4 holding in *Monge v. California*, 524 U.S. 721 (1998), that double
5 jeopardy is not implicated at resentencing following an appeal or
6 collateral attack.

7 **Sec. 2.** RCW 9.94A.441 and 1981 c 137 s 10 are each amended to read
8 as follows:

9 The prosecuting attorney and the defendant shall each provide the
10 court with their understanding of what the defendant's criminal history
11 is prior to a plea of guilty pursuant to a plea agreement. If the
12 defendant fails to affirmatively set forth his or her understanding of
13 his or her criminal history, he or she shall be deemed to have admitted
14 that the prosecuting attorney's statement of his or her criminal
15 history is correct. All disputed issues as to criminal history shall
16 be decided at the sentencing hearing.

17 **Sec. 3.** RCW 9.94A.500 and 2006 c 339 s 303 are each amended to
18 read as follows:

19 (1) Before imposing a sentence upon a defendant, the court shall
20 conduct a sentencing hearing. The sentencing hearing shall be held
21 within forty court days following conviction. Upon the motion of
22 either party for good cause shown, or on its own motion, the court may
23 extend the time period for conducting the sentencing hearing.

24 Except in cases where the defendant shall be sentenced to a term of
25 total confinement for life without the possibility of release or, when
26 authorized by RCW 10.95.030 for the crime of aggravated murder in the
27 first degree, sentenced to death, the court may order the department to
28 complete a risk assessment report. If available before sentencing, the
29 report shall be provided to the court.

30 Unless specifically waived by the court, the court shall order the
31 department to complete a chemical dependency screening report before
32 imposing a sentence upon a defendant who has been convicted of a
33 violation of the uniform controlled substances act under chapter 69.50
34 RCW, a criminal solicitation to commit such a violation under chapter
35 9A.28 RCW, or any felony where the court finds that the offender has a
36 chemical dependency that has contributed to his or her offense. In

1 addition, the court shall, at the time of plea or conviction, order the
2 department to complete a presentence report before imposing a sentence
3 upon a defendant who has been convicted of a felony sexual offense.
4 The department of corrections shall give priority to presentence
5 investigations for sexual offenders. If the court determines that the
6 defendant may be a mentally ill person as defined in RCW 71.24.025,
7 although the defendant has not established that at the time of the
8 crime he or she lacked the capacity to commit the crime, was
9 incompetent to commit the crime, or was insane at the time of the
10 crime, the court shall order the department to complete a presentence
11 report before imposing a sentence.

12 The court shall consider the risk assessment report and presentence
13 reports, if any, including any victim impact statement and criminal
14 history, and allow arguments from the prosecutor, the defense counsel,
15 the offender, the victim, the survivor of the victim, or a
16 representative of the victim or survivor, and an investigative law
17 enforcement officer as to the sentence to be imposed.

18 A criminal history summary relating to the defendant from the
19 prosecuting authority or from a state, federal, or foreign governmental
20 agency shall be prima facie evidence of the existence and validity of
21 the convictions listed therein. If the court is satisfied by a
22 preponderance of the evidence that the defendant has a criminal
23 history, the court shall specify the convictions it has found to exist.
24 All of this information shall be part of the record. Copies of all
25 risk assessment reports and presentence reports presented to the
26 sentencing court and all written findings of facts and conclusions of
27 law as to sentencing entered by the court shall be sent to the
28 department by the clerk of the court at the conclusion of the
29 sentencing and shall accompany the offender if the offender is
30 committed to the custody of the department. Court clerks shall
31 provide, without charge, certified copies of documents relating to
32 criminal convictions requested by prosecuting attorneys.

33 (2) To prevent wrongful disclosure of information related to mental
34 health services, as defined in RCW 71.05.445 and 71.34.345, a court may
35 take only those steps necessary during a sentencing hearing or any
36 hearing in which the department presents information related to mental
37 health services to the court. The steps may be taken on motion of the
38 defendant, the prosecuting attorney, or on the court's own motion. The

1 court may seal the portion of the record relating to information
2 relating to mental health services, exclude the public from the hearing
3 during presentation or discussion of information relating to mental
4 health services, or grant other relief to achieve the result intended
5 by this subsection, but nothing in this subsection shall be construed
6 to prevent the subsequent release of information related to mental
7 health services as authorized by RCW 71.05.445, 71.34.345, or
8 72.09.585. Any person who otherwise is permitted to attend any hearing
9 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the
10 hearing solely because the department intends to disclose or discloses
11 information related to mental health services.

12 **Sec. 4.** RCW 9.94A.525 and 2007 c 199 s 8 and 2007 c 116 s 1 are
13 each reenacted and amended to read as follows:

14 The offender score is measured on the horizontal axis of the
15 sentencing grid. The offender score rules are as follows:

16 The offender score is the sum of points accrued under this section
17 rounded down to the nearest whole number.

18 (1) A prior conviction is a conviction which exists before the date
19 of sentencing for the offense for which the offender score is being
20 computed. Convictions entered or sentenced on the same date as the
21 conviction for which the offender score is being computed shall be
22 deemed "other current offenses" within the meaning of RCW 9.94A.589.

23 (2)(a) Class A and sex prior felony convictions shall always be
24 included in the offender score.

25 (b) Class B prior felony convictions other than sex offenses shall
26 not be included in the offender score, if since the last date of
27 release from confinement (including full-time residential treatment)
28 pursuant to a felony conviction, if any, or entry of judgment and
29 sentence, the offender had spent ten consecutive years in the community
30 without committing any crime that subsequently results in a conviction.

31 (c) Except as provided in (e) of this subsection, class C prior
32 felony convictions other than sex offenses shall not be included in the
33 offender score if, since the last date of release from confinement
34 (including full-time residential treatment) pursuant to a felony
35 conviction, if any, or entry of judgment and sentence, the offender had
36 spent five consecutive years in the community without committing any
37 crime that subsequently results in a conviction.

1 (d) Except as provided in (e) of this subsection, serious traffic
2 convictions shall not be included in the offender score if, since the
3 last date of release from confinement (including full-time residential
4 treatment) pursuant to a felony conviction, if any, or entry of
5 judgment and sentence, the offender spent five years in the community
6 without committing any crime that subsequently results in a conviction.

7 (e) If the present conviction is felony driving while under the
8 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
9 felony physical control of a vehicle while under the influence of
10 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
11 of felony driving while under the influence of intoxicating liquor or
12 any drug, felony physical control of a vehicle while under the
13 influence of intoxicating liquor or any drug, and serious traffic
14 offenses shall be included in the offender score if: (i) The prior
15 convictions were committed within five years since the last date of
16 release from confinement (including full-time residential treatment) or
17 entry of judgment and sentence; or (ii) the prior convictions would be
18 considered "prior offenses within ten years" as defined in RCW
19 46.61.5055.

20 (f) This subsection applies to both adult and juvenile prior
21 convictions.

22 (3) Out-of-state convictions for offenses shall be classified
23 according to the comparable offense definitions and sentences provided
24 by Washington law. Federal convictions for offenses shall be
25 classified according to the comparable offense definitions and
26 sentences provided by Washington law. If there is no clearly
27 comparable offense under Washington law or the offense is one that is
28 usually considered subject to exclusive federal jurisdiction, the
29 offense shall be scored as a class C felony equivalent if it was a
30 felony under the relevant federal statute.

31 (4) Score prior convictions for felony anticipatory offenses
32 (attempts, criminal solicitations, and criminal conspiracies) the same
33 as if they were convictions for completed offenses.

34 (5)(a) In the case of multiple prior convictions, for the purpose
35 of computing the offender score, count all convictions separately,
36 except:

37 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
38 encompass the same criminal conduct, shall be counted as one offense,

1 the offense that yields the highest offender score. The current
2 sentencing court shall determine with respect to other prior adult
3 offenses for which sentences were served concurrently or prior juvenile
4 offenses for which sentences were served consecutively, whether those
5 offenses shall be counted as one offense or as separate offenses using
6 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
7 if the court finds that they shall be counted as one offense, then the
8 offense that yields the highest offender score shall be used. The
9 current sentencing court may presume that such other prior offenses
10 were not the same criminal conduct from sentences imposed on separate
11 dates, or in separate counties or jurisdictions, or in separate
12 complaints, indictments, or informations;

13 (ii) In the case of multiple prior convictions for offenses
14 committed before July 1, 1986, for the purpose of computing the
15 offender score, count all adult convictions served concurrently as one
16 offense, and count all juvenile convictions entered on the same date as
17 one offense. Use the conviction for the offense that yields the
18 highest offender score.

19 (b) As used in this subsection (5), "served concurrently" means
20 that: (i) The latter sentence was imposed with specific reference to
21 the former; (ii) the concurrent relationship of the sentences was
22 judicially imposed; and (iii) the concurrent timing of the sentences
23 was not the result of a probation or parole revocation on the former
24 offense.

25 (6) If the present conviction is one of the anticipatory offenses
26 of criminal attempt, solicitation, or conspiracy, count each prior
27 conviction as if the present conviction were for a completed offense.
28 When these convictions are used as criminal history, score them the
29 same as a completed crime.

30 (7) If the present conviction is for a nonviolent offense and not
31 covered by subsection (11), (12), or (13) of this section, count one
32 point for each adult prior felony conviction and one point for each
33 juvenile prior violent felony conviction and 1/2 point for each
34 juvenile prior nonviolent felony conviction.

35 (8) If the present conviction is for a violent offense and not
36 covered in subsection (9), (10), (11), (12), or (13) of this section,
37 count two points for each prior adult and juvenile violent felony

1 conviction, one point for each prior adult nonviolent felony
2 conviction, and 1/2 point for each prior juvenile nonviolent felony
3 conviction.

4 (9) If the present conviction is for a serious violent offense,
5 count three points for prior adult and juvenile convictions for crimes
6 in this category, two points for each prior adult and juvenile violent
7 conviction (not already counted), one point for each prior adult
8 nonviolent felony conviction, and 1/2 point for each prior juvenile
9 nonviolent felony conviction.

10 (10) If the present conviction is for Burglary 1, count prior
11 convictions as in subsection (8) of this section; however count two
12 points for each prior adult Burglary 2 or residential burglary
13 conviction, and one point for each prior juvenile Burglary 2 or
14 residential burglary conviction.

15 (11) If the present conviction is for a felony traffic offense
16 count two points for each adult or juvenile prior conviction for
17 Vehicular Homicide or Vehicular Assault; for each felony offense count
18 one point for each adult and 1/2 point for each juvenile prior
19 conviction; for each serious traffic offense, other than those used for
20 an enhancement pursuant to RCW 46.61.520(2), count one point for each
21 adult and 1/2 point for each juvenile prior conviction; count one point
22 for each adult and 1/2 point for each juvenile prior conviction for
23 operation of a vessel while under the influence of intoxicating liquor
24 or any drug.

25 (12) If the present conviction is for homicide by watercraft or
26 assault by watercraft count two points for each adult or juvenile prior
27 conviction for homicide by watercraft or assault by watercraft; for
28 each felony offense count one point for each adult and 1/2 point for
29 each juvenile prior conviction; count one point for each adult and 1/2
30 point for each juvenile prior conviction for driving under the
31 influence of intoxicating liquor or any drug, actual physical control
32 of a motor vehicle while under the influence of intoxicating liquor or
33 any drug, or operation of a vessel while under the influence of
34 intoxicating liquor or any drug.

35 (13) If the present conviction is for manufacture of
36 methamphetamine count three points for each adult prior manufacture of
37 methamphetamine conviction and two points for each juvenile manufacture
38 of methamphetamine offense. If the present conviction is for a drug

1 offense and the offender has a criminal history that includes a sex
2 offense or serious violent offense, count three points for each adult
3 prior felony drug offense conviction and two points for each juvenile
4 drug offense. All other adult and juvenile felonies are scored as in
5 subsection (8) of this section if the current drug offense is violent,
6 or as in subsection (7) of this section if the current drug offense is
7 nonviolent.

8 (14) If the present conviction is for Escape from Community
9 Custody, RCW 72.09.310, count only prior escape convictions in the
10 offender score. Count adult prior escape convictions as one point and
11 juvenile prior escape convictions as 1/2 point.

12 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
13 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
14 juvenile prior convictions as 1/2 point.

15 (16) If the present conviction is for Burglary 2 or residential
16 burglary, count priors as in subsection (7) of this section; however,
17 count two points for each adult and juvenile prior Burglary 1
18 conviction, two points for each adult prior Burglary 2 or residential
19 burglary conviction, and one point for each juvenile prior Burglary 2
20 or residential burglary conviction.

21 (17) If the present conviction is for a sex offense, count priors
22 as in subsections (7) through (11) and (13) through (16) of this
23 section; however count three points for each adult and juvenile prior
24 sex offense conviction.

25 (18) If the present conviction is for failure to register as a sex
26 offender under RCW 9A.44.130(~~((+10))~~) (11), count priors as in
27 subsections (7) through (11) and (13) through (16) of this section;
28 however count three points for each adult and juvenile prior sex
29 offense conviction, excluding prior convictions for failure to register
30 as a sex offender under RCW 9A.44.130(~~((+10))~~) (11), which shall count
31 as one point.

32 (19) If the present conviction is for an offense committed while
33 the offender was under community placement, add one point.

34 (20) If the present conviction is for Theft of a Motor Vehicle,
35 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
36 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
37 priors as in subsections (7) through (18) of this section; however
38 count one point for prior convictions of Vehicle Prowling 2, and three

1 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
2 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
3 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
4 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
5 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
6 Permission 2 conviction.

7 (21) The fact that a prior conviction was not included in an
8 offender's offender score or criminal history at a previous sentencing
9 shall have no bearing on whether it is included in the criminal history
10 or offender score for the current offense. (~~Accordingly,~~) Prior
11 convictions that were not counted in the offender score or included in
12 criminal history under repealed or previous versions of the sentencing
13 reform act shall be included in criminal history and shall count in the
14 offender score if the current version of the sentencing reform act
15 requires including or counting those convictions. Prior convictions
16 that were not included in criminal history or in the offender score
17 shall be included upon any resentencing to ensure imposition of an
18 accurate sentence.

19 **Sec. 5.** RCW 9.94A.530 and 2005 c 68 s 2 are each amended to read
20 as follows:

21 (1) The intersection of the column defined by the offender score
22 and the row defined by the offense seriousness score determines the
23 standard sentence range (see RCW 9.94A.510, (Table 1) and RCW
24 9.94A.517, (Table 3)). The additional time for deadly weapon findings
25 or for other adjustments as specified in RCW 9.94A.533 shall be added
26 to the entire standard sentence range. The court may impose any
27 sentence within the range that it deems appropriate. All standard
28 sentence ranges are expressed in terms of total confinement.

29 (2) In determining any sentence other than a sentence above the
30 standard range, the trial court may rely on no more information than is
31 admitted by the plea agreement, or admitted, acknowledged, or proved in
32 a trial or at the time of sentencing, or proven pursuant to RCW
33 9.94A.537. Acknowledgment includes not objecting to information stated
34 in the presentence reports and not objecting to criminal history
35 presented at the time of sentencing. Where the defendant disputes
36 material facts, the court must either not consider the fact or grant an
37 evidentiary hearing on the point. The facts shall be deemed proved at

1 the hearing by a preponderance of the evidence, except as otherwise
2 specified in RCW 9.94A.537. On remand for resentencing following
3 appeal or collateral attack, the parties shall have the opportunity to
4 present and the court to consider all relevant evidence regarding
5 criminal history, including criminal history not previously presented.

6 (3) In determining any sentence above the standard sentence range,
7 the court shall follow the procedures set forth in RCW 9.94A.537.
8 Facts that establish the elements of a more serious crime or additional
9 crimes may not be used to go outside the standard sentence range except
10 upon stipulation or when specifically provided for in RCW
11 9.94A.535(~~(+2)~~) (3) (d), (e), (g), and (h).

12 NEW SECTION. Sec. 6. Sections 3 and 4 of this act apply to all
13 sentencings and resentencings commenced before, on, or after the
14 effective date of this section.

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